ARKANSAS BAR EXAMINATION

FEBRUARY 1997

1 question

30 minutes

CRIMINAL LAW AND PROCEDURE

Darrel, Sam, and Joe were riding along Pine Street looking for friend's house. Darrel was driving very slowly when two officers pulled them over because they looked suspicious driving slow in a known drug neighborhood. The officers asked Darrel for his registration and when Darrel reached to open the glove compartment of his vehicle, the officer said, "I will remove your papers." The officer saw the registration when he opened the glove compartment, but he continued to search. He saw a purple bag in the glove compartment and opened it and it contained four rocks of cocaine weighing 2 ounces. The officers saw an empty beer bottle by Joe's foot and he was asked to step out of the front passenger's seat of the vehicle and was searched. Sam was sitting in the rear passenger seat and he was asked to step out of the vehicle and he was searched.

The officers charged all three suspects with possession of a controlled substance with intent to deliver.

1. Discuss whether there was probable cause for the initial stop.

2. Discuss whether the officers' search of the vehicle violated the suspects' constitutional rights.

3. Discuss whether the controlled substance was admissible as evidence at the trial of each suspect and whether a motion for severance would be an appropriate motion in the trial of this case.

ARKANSAS

CRIMINAL LAW AND PROCEDURE

#1

PC for initial stop.

Probable cause is reasonable grounds to believe a crime has been committed and the defendant did it, that is PC for an arrest. PC for the initial stop must be shown by the police, that is, reasonable grounds of belief that a crime has been committed. Reasonable grounds are articulatable facts that the officer has based on his experience, training and judgment.

Here the only facts available are that the defendants were driving slowly and looked suspicious. The prosecution would argue (at suppression hearing) that based on this officer's experience, training and in this neighborhood the officer had reasonable grounds to believe, i.e., probable cause.

The defense will argue that the officer was merely "profiling" and has no articulatable reasons to stop these individuals.

The court will look at all the circumstances of the PC including credibility of officer.

Under these facts probable cause to stop is not apparent and would not constitute probable cause.

#2

A search under the 4th Amendment (applicable to the state through the 14th Amendment) is reasonable if there is probable cause and a warrant, or if it falls within an exception to the PC and warrant requirement.

The "auto" exception to the 4th Amendment is based on that persons have a lesser expectation of privacy in a car. And if an officer has probable cause (reasonable grounds for belief that a legitimate item of seizure is located in a particular place) he can search the auto without a warrant. Court allows PC searches of cars also because of the mobility of an auto and the danger any evidence might be destroyed.

"Lesser intrusion not amounting to full scale search" A Terry stop and frisk. This exception is based on the need to search a suspect for weapons for the officer's safety.

Prosecution will argue that police had PC to search based on beer bottle at defendants feet and police can search the "wing span" of the defendant for officers protection.

The defense will argue that the officers lacked probable cause because the beer bottle was found after defendant got out of vehicle. That the officer had no reason to have the defendants exit the vehicle.

But, US.S.Ct. recently ruled that officers can require all passengers to exit the vehicle for safety of the officers.

The search of the glove box was within the wing span of the defendant and thus permissible under the 4th.

The search of the Joe and Sam persons o.k. under the Terry stop & frisk, to protect officers.

The search of purple bag may have been proper if as the officers were searching for weapons the officers discovered the bag. And based on experience and training the "lumps" in the bag was believed to be crack.

#3

The exclusionary rule would prevent admission of the drugs if it was seized in violation of 4th Amendment. Sam and Joe could still be charged with even though it was excluded against Darrel. Unless the search also violated their rights. Could have a severance issue based on the fact that each defendant could point the finger at the other.

Facts the court looks at when dealing with severance are whether it was part of a common

scheme or plan. Whether the defendants will "point fingers" at each other. Whether it will prejudice the defendants to try them together.

Weight of crack (2 oz.) reason was intent to deliver (presumption).

Darrel: probably not admissible b/c of no PC for stop.

ARKANSAS BAR EXAMINATION

FEBRUARY 1997

1 question

30 minutes

CONSTITUTIONAL LAW

By State law, Little Rock's planning jurisdiction extends throughout the city, and 5 miles beyond its boundaries. In 1988, the Little Rock City Council passed an ordinance declaring all undeveloped riverfront property within its planning jurisdiction to be zoned CE-1 (Commercial-Environmental, Lowest Density).

In 1992, John Asfalt paid $1 million for undeveloped riverfront property six miles upstream of Little Rock. In 1995, Asfalt publicly offered stock in a condominium-marina project to begin construction on the Riverfront in June, 1997. The subscription sold out for $35 million. In 1996, Little Rock voters annexed land two miles upstream placing Asfalt's land within the planning jurisdiction effective January 1, 1997. Shortly afterwards, the City issued to Asfalt a Notice of Intent to zone his property CE-1, and after a hearing before the Planning Commission and the Board of Directors, the City placed Asfalt's riverfront property in a CE-1 zoning, and advised Asfalt that his proposed condominium-marina project could not proceed.

CE-1 zoning permits the following uses and activities on a pay for use basis: low density (1 table/acre) picnic facilities; low density organic gardening rental plots (1 40x20 plot/acre); guided nature walks; unpowered boat marinas (3 slips per 1000' river frontage, off-site parking permitted no closer than 1000 feet from water).

The 1988 ordinance recites that the new land use is necessary in the public interest to prevent inorganic runoffs associated with high density development from further contaminating the fragile urban river eco-system. The City Council also noted that the Minnesota Bulls Eye Merganser flies over and from time immemorial has landed along the Arkansas River around Little Rock in its annual migration to the Great Lukewarm Swamp outside Revelations, Louisiana. The Bulls Eye Merganser has become endangered for reasons that must appear obvious. Very few of the weary quackers would survive the Stuggart overflight if they didn't get R and R in Little Rock.

The stockholders in Asfalt's project are demanding their money back, some of which has already been spent on plans. Asfalt complains that the CE-1 uses are so limited as to make his land worthless to any but ducks and wackos.

Is Asfalt entitled to any relief in an action against Little Rock? If not, why not? If so, what relief is he entitled to?

ARKANSAS

CONSTITUTIONAL LAW

The Fifth Amendment provides that private property shall not be taken for public use without just compensation. This provision is made applicable to the states by the Fourteenth Amendment. Counties, cities, and towns within states also operate with this restriction. Little Rock's City Council may act under its police power to regulate for public benefit and welfare to the extent allowed by state law. This power includes zoning regulations. Such regulations necessarily convert private property to "public use" in part, by placing requirements on land-owners to use (or not use) their property in a way that benefits others. Whether such zoning rises to the level of a taking is another question. The regulations here appear to rationally related to legitimate government interests, and are, therefore, valid: The Council's action was not without due process.

A taking occurs when the uses of land are so restricted than any reasonable, economically productive use is foreclosed. Additional considerations are whether the investment-backed expectations of the owner are greatly reduced; whether the regulation creates a sharing of the benefits and burdens of regulation; and whether the owner had title to conduct the activity now barred by the zoning.

The facts here indicate that almost all economic value has been taken from the land. Picnic facilities are very unlikely to create substantial revenue streams, and are further limited to a low density. Likewise, the parking and boat slips are sufficiently restricted in scope to leave Asfalt with virtually no productive economic use for the land.

Asfalt's investment expectation, however, may weaken his claim for relief. When he purchased the property, the city had zoned similar areas for the stiff restrictions. They had not yet exercised their annexation power over Asfalt's area, however, so it is partly a question of how foreseeable it was that Little Rock would annex and zone the new area. If is was foreseeable, then Asfalt's claim is weaker. Likewise, if the activities proscribed by the ordinance would be a nuisance (which they don't appear to be) then Asfalt would not have acquired these "sticks in the bundle of ownership rights," and his plan would not be allowed under his title, and thus no taking would have occurred. See: Lucas v. S. Carolina Costal Comm. Finally, Asfalt appears to bear the burden for the environmental benefit of others - there is no reciprocity.

If Asfalt demonstrates a taking, he will be entitled to compensation. At most, it would be $1 mil. assuming that he paid that price for property with some economically valuable use. Little Rock would have the opportunity to rescind or amend the restriction, although it would remain liable for any damage caused by the temporary taking. The amendments would have to allow some economically valuable use, although not necessarily the project planned by Asfalt. He might also be able to recover damages for his spending on plans, in addition to the decline in value of the property. There should be no expectancy damages for the potential revenue from

the development unless that was the only economically viable use. Thus, so long as Little Rock allows him to make some money, it should be safe from owing compensation for anything other than temporary damages.

ARKANSAS BAR EXAMINATION

FEBRUARY 1997

1 question

30 minutes

TORTS

On Saturday, January 18, 1997, Mrs. Vera Victim, rented a video, the Three Ninjas, for her six year old son's Saturday night birthday party and sleep-over. The video was rented from Backbreaker Video. Under the terms of the rental agreement, the video was to be returned within two days, by midnight, January 20, the following Monday. Rather than wait until Monday, Mrs. Victim returned the video on Sunday, January 19, 197, just one day after she rented it. She dropped the video off in a return drop box provided by Backbreaker Video.

When the videos were collected out of the drop box, a new Backbreaker employee forgot to log Mrs. Victim's video back in. The normal procedure would have been for the employee to scan the video bar code (identification number) on each returned video into the computer which tracks the video store's inventory. Rather than properly log Mrs. Victim's video in, the employee inadvertently returned the video to the display shelves so that it could be rented again.

On January 21, 1997, the following Tuesday, the manager of the video store did a computer check of the inventory to determine what videos were overdue according to its records. Since Mrs. Victim's video had not been logged in, the video which she had already returned showed up on the computer as overdue and not yet returned.

When the manager's computer inventory check of January 31, 1997, indicated that Mrs. Victim's video had still not been returned, the Backbreaker manager then went to the prosecutor and swore out a complaint for Mrs. Victim's arrest. Backbreaker purported to take its action against Mrs. Victim pursuant to Section 5-36-115 of the Arkansas criminal code, which provides in relevant part as follows: 5-36-115. Theft of leased, rented, or entrusted personal property.

(c) It shall be prima facie evidence of intent to commit theft when one who has leased or rented the personal property of another fails to return or make arrangements acceptable with the lessor to return the personal property within five (5) days ... after proper notice...

(d) Proper notice by the lessor shall consist of a written demand addressed and mailed by certified letter or registered mail to the lessee...

Backbreaker made no effort to send Mrs. Victim any type of notice prior to swearing out a warrant for her arrest.

Mrs. Victim was arrested on the evening of January 31, 1997. Since she was arrested so late in the day, she had to spend the night in jail before she could be brought before a judge the next day. As part of the arrest process, Mrs. Victim was finger printed, photographed, and strip searched, before being placed into her jail cell. On February 1, 1997, a Saturday, she was brought before a judge who ordered her released on her personal recognizance.

On the same day that Mrs. Victim was released from jail, another customer of Backbreaker rented the same video that Mrs. Victim had previously rented. When that video was scanned into the store's computer to be rented out, the clerk was able to see on the computer screen that the video had not been logged in. Realizing that it had made a mistake with respect to Mrs. Victim, Backbreaker Video immediately notified the prosecutor to drop all charges against Mrs. Victim. To make up, they sent her a dollar off coupon on her next rental.

As a result of her own ordeal, Mrs. Victim was embarrassed, humiliated, and caused to suffer emotional distress, which required medical care. Within a few days of being notified that the theft charges had been dropped, Mrs. Victim comes to you as her prospective lawyer to see if she has any causes of action against Backbreaker Video for her arrest, night in jail, and attendant injuries or damages.

Assume that the above facts will not be in dispute. (1) State the possible cause (s) of action, if any, that Mrs. Victim may have against Backbreaker Video. (2) State the elements of proof of any such cause(s) of action. In order words, what will she need to prove in order to recover against Backbreaker Video?

ARKANSAS

TORTS

Possible causes of action:

false arrest/imprisonment

malicious prosecution

outrage

defamation

abuse of process

False Arrest:

Mrs. Victim could have a cause of action for false arrest/false imprisonment. Backbreaker caused an arrest warrant to be issued and caused her to be arrested and held in jail. Backbuster did not act reasonably in that it was its own mistake that the video was not properly logged in. Further, Backbreaker did not follow the statutory requirements because it never sent Ms. Victim any demand or notice prior to causing an arrest warrant to issue. Mrs. Victim was held against her will based on false accusations of Backbreaker. She has been damaged (as evidenced by the

required medical care) and Backbuster is the cause of her damage because her damage is a direct result of Backbuster's act. 2. Malicious prosecution occurs when a person institutes (or causes to be instituted) legal proceedings against another person without just cause. In this instance, it was Backbuster's own inefficiency that caused the error. Further, Backbuster did not provide the required statutory notice. Mrs. Victim was damaged and had to undergo medical treatment as a direct result of Backbuster's act.

Malice can be presumed or inferred from conduct.

3. The tort of outrage is difficult to prove in Arkansas. Outrage is the intentional infliction of emotional distress. The act by the defendant must be such that no person should be expected to endure it and must go beyond the limits acceptable by civilized persons. The act was intentional in that Backbuster intentionally caused Mrs. Victim to be arrested. Backbuster is liable for all foreseeable consequences of its actions whether the consequences were intentional or not. It certainly is foreseeable that causing a person to be arrested will subject that person to humiliation, embarrassment and emotional distress. I think Mrs. Victim has a good argument that Backbuster's conduct met the requirements of outrage, particularly since Backbuster did not follow the statutory notice requirement. Furthermore, I think the failure of Backbuster to follow the statutory notice requirement is conduct from which malice or oppressive conduct can be inferred and Mrs. Victim would be entitled to punitive damages.

It is beyond the limits of decency for Mrs. Victim to have suffered the humiliation and emotional distress of being fingerprinted, strip searched and locked up like a common criminal when she had done nothing wrong and Backbuster did nothing properly (failed to log video in and failed to follow statutory procedure).

Generally, a person cannot recover for purely emotional damages without a physical injury. The tort of outrage is an exception. Also, many courts would find physical injury in the fact that Mrs. Victim had to receive medical care. The courts often find "physical injury" in physical symptoms like headaches, nausea, vomiting, etc.

4. Defamation - slander/libel

Defamation is the publication known to be false or reckless as to the truth or falsity of a false statement about another person. To be defamatory the statement must be one that causes others to ridicule or dislike or feel hatred toward the person defamed. Publication does not have to be in print for slander. (Libel must be in print or newscast or something) Publication also does not require that a large group of persons be told. Slander usually requires proof of special damages but there are exceptions for types of slander that are "slander per se" and damages are presumed. Accusation that a person committed a crime is one of the slander per se exceptions under which damages are presumed.

Here, Backbuster defamed Mrs. Victim by stating to the police that she had stolen a video. Theft is a crime, so this is slander per se and damages are presumed. Also, since Mrs. Victim is not a public figure, she does not have to prove actual malice, just recklessness as to the truth or falsity. If she shows malice or oppressive conduct she can get punitives just like for outrage.

5. Abuse of process.

A person commits abuse of process when he uses a legal process for other than its intended purpose. In this situation Backbuster used the theft statute for other than its intended purpose by:

(1) failing in its own internal procedures (2) failing to provide the statutorily required notice

(3) causing a completely innocent person to be arrested.

Punitives are available for this tort as well if show malice or oppressive conduct.

ARKANSAS BAR EXAMINATION

FEBRUARY 1997

3 questions

30 minutes

PROPERTY

Question 1. X, while unmarried, inherited $10,000 from an uncle. X bought real property, "Whiteacre," on which a house was situated with those funds. Subsequently X and Y were married, and they lived in the house. Later X sold Whiteacre. He alone executed the deed of conveyance. X then used the proceeds of that sale to make the down payment on Blackacre. The deed to Blackacre was taken in the names of "X and Y, his wife." X, from wages earned by him and kept in a separate, individual account, paid off the balance of the purchase price of Blackacre. X, without Y's knowledge, conveyed his interest in Blackacre to his son, S.

X died, survived by Y. Y conveyed Blackacre to D, her daughter by a previous marriage.

S filed suit against D claiming that since X had bought Blackacre with inherited funds and his separate earnings, it all belonged to X, and the conveyance to him by X transferred all of Blackacre to him. Alternatively, he claimed that the conveyance to him of X's interest destroyed the tenancy by the entirety, if one ever existed, and that he and D hold title as tenants in common. You represent D. How do you respond?

Question 2. Twenty years have elapsed since X conveyed Whiteacre. What interest, if any, does Y have in Whiteacre at this time? Did she ever have any interest?

Question 3. Sam owns land adjoining Blackacre. 10 years before his death X gave Sam oral permission to erect a fence 20 feet over the property line onto Blackacre. Y was unaware that X had given Sam this permission, and while she was familiar with the location of the fence that Sam erected, she did not know that it was on Blackacre until she had Blackacre surveyed after X's death. Y sued Sam seeking removal of the fence, alleging that she had never given permission to Sam, and further, that oral permission was insufficient to give Sam any right to keep the fence there after X's death.

Sam countered contending that in the event the Court found oral permission insufficient as to Y, that since he had exclusively possessed the property within the fence for 10 years, he was

entitled to a decree quieting title to this area. How would you decide these issues? Explain.

ARKANSAS

PROPERTY

1. Tenancy by Entireties -

A tenancy by the entirety was created when X purchased property and the deed stated that it was taken in the names of "X and Y, his wife." A conveyance to a husband and wife in Arkansas presumptively creates a tenancy by the entireties. Under common law, the requirements of time, title, interest, and property, (4 unities) as well as marriage were needed to create a tenancy by the entireties. In Arkansas, no such formality is needed and a deed with title in "x and y, his wife" is sufficient.

The key attributes to a tenancy by the entireties are the right of survivorship and inability to unilaterally destroy (sever) this joint tenancy by the entireties.

In representing D, I would respond to S by saying that this unilateral conveyance by X did not sever the joint tenancy by the entireties. In Arkansas, the conveyance to S was not void, but only conveyed the interest held by X. As such, S was entitled to use the land, enter the land, and possess the land during X's lifetime.

In addition, the only other interest X had that was conveyed to S was his right of survivorship. Since X died, the rights of S were extinguished because title to this whole property vested in Y immediately upon X's death. D owns this property (Blackacre) in fee simple, because Y conveyed this property to him.

2. Y's only interest in Whiteacre is a dower interest that she acquired when X and Y were married. Dower is the property right that attaches to all real property owned by a husband and wife during marriage. Since 20 years have elapsed since the sale of Whiteacre, any possible dower interest has probably been extinguished by adverse possession by the new owner. In addition, since X alone executed the conveyance, Y did not have an opportunity to release her dower interest. However, since 20 years have passed, the 7 year limitations period is over and the new owner is probably free of the wife's dower interest.

3. Adverse Possession

For an occupier to take title to land by adverse possession, his possession must be open, continuous, exclusive, adverse for the statutory period, notorious, and without permission of the owner.

In this case, the elements of adverse possession are not present. Although Sam's possession of the fence and area inside the fence was open, continuous, notorious, and for the statutory period (7 years), it was with the permission of the true owner, so an adverse possession claim will fail.

Oral permission in a boundary line dispute may estop Y from asserting any right to remove the fence. There is also a possible laches argument in that Y waited too long before bringing any

action to remove the fence.

ARKANSAS BAR EXAMINATION

FEBRUARY 1997

1 question

30 minutes

EVIDENCE

You are a new associate in a litigation firm. Your senior partner asks for your help in connection with an upcoming trial. He explains that he is suing the executive vice president of a corporation based on allegations that the executive vice president secretly used corporate assets for personal gain. The case is a civil trial to recoup the assets secretly diverted from the corporation.

Your senior partner has learned that the Defendant, Smith, was convicted of theft by deception in Pulaski County ten years ago. he would like to use the fact of the conviction as evidence at the upcoming trial. You are asked to do the following:

1. Analyze the admissability of the prior conviction in the civil trial. If it is admissible, why? If not, why not?

2. Assume for the second portion of this question that the trial judge allows you to ask the defendant about the conviction. He denies that the conviction ever occurred. What do you do now?

ARKANSAS

EVIDENCE

(1.) Prior convictions of witnesses are generally admissible if the conviction was for a felony or a misdemeanor that involved dishonesty or deceit. Here the prior conviction was for theft by deception. Depending on the amount of money involved, it may have been a felony. Even if it was a misdemeanor, however, it did involve dishonesty or deceit, therefore, it would generally be admissible. There are some exceptions, however. One of these exceptions is that the prior conviction cannot be introduced if it was more than ten (10) years ago. The facts indicate that the crime occurred 10 years ago. Therefore, it may not be admissible. We would need to find out the exact dates and see if it was more than 10 years ago. If it was, it isn't admissible. If it was not, the judge will still subject the evidence to Rule 403. He will look to see if the probative value is substantially outweighed by unfair prejudice, confusing or misleading the jury or if it is time consuming or cumulative. Normally, the more a conviction resembles the present cause of action, the more likely a judge will be to rule that its probative value is outweighed by the prejudice. Here, we really don't know what the prior theft was for so we can't make that determination. In this case, if it is in the correct time frame, I think it will be admissible.

(2.) In some cases, extrinsic evidence cannot be introduced to prove specific acts of conduct if the witness denies them on cross- examination. However, when a prior conviction is involved, I believe the defendant may be impeached with the prior conviction. The Best Evidence Rule would require a certified copy of the conviction. I would impeach the defendant with the certified copy of the conviction.

ARKANSAS BAR EXAMINATION

FEBRUARY 1997

1 question

30 minutes

CONTRACTS

While you are still in college a special friend, who is a sophomore in high school, asks you to help him buy a car. You go to the local bank where the friend signs a note for $2,500 (plus lawful interest) payable in full in one year. The loan officer, who knows you well, says that the bank needs a guaranty for this loan and asks you to guarantee the prompt payment in full of this loan. You say "okay I will do it."

The banker nods her head, then pays the money to the car dealer who hands the keys to your friend. After college you go to law school and forget about this. After law school you go back to your Arkansas hometown and open a law practice.

After three long and lean years you decide it is time to buy a copier for your law office. You go to the same bank to finance it. By now the loan officer is a senior vice president who says "I have ben meaning to tell you that no payments were ever made on your friend's note and the bank wants you to pay it." She continues to say "that after your friend loaned the car to an unauthorized driver who wrecked it, the insurance company refused to pay, even though it was a total loss." She concludes by telling you that your special friend left town with the unauthorized driver and their whereabouts are unknown. She adds that the bank knew you were having a tough time and that is why they did not mention this earlier, but that now bank examiners were pressing them to collect the note.

1. Do you have any defenses against the bank? If so discuss all of these thoroughly.

2. What do you tell the banker?

ARKANSAS

CONTRACTS

1. The promise to answer for the debt/default of another must be in writing.

a. Bank seeks to hold me liable as a guarantor of a negotiable instrument - note. First, if the

bank seeks to enforce the note against me, it will not prevail. Only those whose signatures appear on the instrument are liable thereon. Under the facts given, I did not sign the note and therefore have no liability on the note.

Second, if the bank seeks to hold me liable as a guarantor there must be consideration for my promise to pay and there must be a writing. The Statute of Frauds is applicable for promises of sureties - guarantors are sureties.

There is consideration for my promise. The bank gave consideration to the dealer in exchange for my promise to serve as a guarantor. It does not matter to whom the consideration flows as long as it (the consideration) is bargained for (sought by the promisor [me] in exchange for the promise and is given by the promisee [bank] in exchange for my promise) and that what is given constitutes legal value. The funds are legal value. The facts do not show that the bank had a prior legal duty to provide the funds. Therefore, lack of consideration is not a viable defense.

However, my promise is oral. The Statute of Frauds requires a writing for a surety's promise - to guard against ill-conceived promises, to serve a cautionary function ("you had better think about this") and to prevent false allegations of promises especially where the promisor does not receive a direct benefit. There is not a writing signed by me in this case. Therefore, the promise is unenforceable.

There is, however, an exception that is relevant. The main purpose doctrine permits an exception to the writing requirement where the main purpose of the surety's promise is the surety's own economic benefit. This rule usually applies in commercial transactions such as an owner's promise (collateral promise) for a contractor. The owner's main purpose is getting his/her building finished. The owner's economic interest and relationship to project provide sufficient evidence to protect against a false allegation of a promise.

Here, the debtor is called a "special friend." This term does not suggest a commercial relationship within the tradition of the main purpose doctrine. Absence a finding of the applicability of the main purpose doctrine, my promise to pay should be unenforceable.

Finally, an additional section of the Statute of Fraud may also be applicable - contracts not performable within a year must be in writing. Here the parties intended full performance within a year from the date of the making of the contract and even if the date of performance exceeded one year, full performance by the bank takes the whole contract outside of the one year requirement.

There is also a possible impairment of collateral defense - a special defense for sureties. Did the bank insist on adequate insurance and itself being named loss payee.

Statute of Limitations is also a viable defense. Statute of Limitations on unwritten contracts in Arkansas is 3 years. The statute ran on my promise while I was in my first year of practice. The note matured in first year of law school, the action against me accrued as one joint and severally liable at maturity and the statute lapses 3 years after accrual.

2. I will tell the banker I will not pay. The bank failed for pursue me before the lapse of the statute and no behavior on my part tolled the Statute of Limitations.

However, if I desperately need a copier and cannot obtain the funds elsewhere, my subsequent promise to pay an obligation barred by the statute will be enforceable. Arkansas requires a writing here as well. But, in the absence of a subsequent promise - and no consideration is needed for this subsequent promise, I have no duty to pay.

The banker may need to consider suing the insurance company if its denial of coverage was in bad faith. Arkansas now recognizes bad faith breach of contract when an insurance company denies coverage in bad faith. Bank may as, loss payee, entitled to recover.